

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MICHAEL D. GATTEN, a/k/a MICHAEL
DEAN GATTEN, and MIRACLE INDUSTRIES LLC,

Plaintiffs,

vs.

No. 1:11-cv-00684 MCA-LFG

RUSSELL GATTEN, and RUSTY CAN ENTERPRISES LLC,

Defendants.

TEMPORARY RESTRAINING ORDER

THIS MATTER having come before the Court on *Plaintiff's Amended Motion For A Temporary Restraining Order* [Doc 5], and the Court having heard argument on the motion on August 9, 2011, and being otherwise duly advised in the premises, **FINDS** the following:

1. Although financial damage is generally reparable through damages in the event that a plaintiff is successful, Plaintiffs have provided evidence that the blankets being marketed by Defendant purport to be of "higher quality" than the blankets offered by Plaintiffs and that given the similarity between the product names, there is further a great likelihood of confusion between the products.
2. Considering the evidence submitted by Plaintiffs, Defendants are using the goodwill built by Plaintiffs' long-standing business in order to bolster sales of the allegedly infringing blankets and to deliberately confuse consumers who have purchased Plaintiffs' products in the past.

3. Defendants' activities are likely to cause Plaintiffs to lose some part of its existing customer base, which constitutes an irreparable injury.
4. Thus, Plaintiffs' affidavit clearly shows that Defendants' continued activities, as described in the affidavit, will cause immediate and irreparable injury, loss, and damage due to Plaintiffs' business and professional reputations.
5. Plaintiffs' attorney has certified that he gave notice of the details of the conflict to Defendants.
6. The communication sent to Defendants provided a detailed and specific description of Plaintiffs' claims and allegations of harm, and the communication further demands that Defendants cease production and marketing of the allegedly infringing product.
7. Defendants responded to the communication by indicating that it would refuse to cease and desist and by threatening to take legal action.
8. Further attempts to provide notice to Defendants, prior to entry of this order, are likely to further exacerbate the harm done to the Plaintiff's business reputation by accelerating Defendants' sale of competing and allegedly infringing blankets during the notice period.

IT IS THEREFORE ORDERED that *Plaintiffs' Amended Motion For A Temporary Restraining Order* [Doc 5] is **GRANTED**, pursuant to Fed.R.Civ.P. 65(b)(1) and that *Plaintiff's Motion For A Temporary Restraining Order* [Doc 2] is **DENIED AS MOOT**.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants, Russell Gatten and Rusty Can Enterprises, LLC, as well as their agents, servants,

employees, attorneys, successors, and assigns, and all persons, firms, and corporations acting in concert or participation with Defendants or on Defendants' behalf, are hereby restrained, enjoined, and prohibited from:

- a. Making, using, selling, and/or offering for sale "swaddling blankets" covered by at least one claim of U.S. Patent No. 6,868,566;
- b. Making, using, selling, and/or offering for sale "swaddling blankets" covered by at least one claim of U.S. Patent No. 7,043,783;
- c. Making, using, selling, and/or offering for sale "swaddling blankets" covered by at least one claim of U.S. Patent No. 7,181,789;
- d. Using the trademark "Miracle Blanket" in commerce;
- e. Using the trademark "The Gift of Sleep" in commerce;
- f. Using the common-law trademark "Amazing Miracle Blanket," or any confusingly similar phrase, including but not limited to "Amazing Blanket," in commerce; and
- g. Representing themselves as in any way connected with the Miracle Blanket product or with Miracle Industries, LLC.

IT IS FURTHER ORDERED that a hearing on this matter will be convened in the presence of both parties at the hour of 2:00 p.m. Friday, August 26, 2011 at the United States Courthouse 333 Lomas Boulevard, NW, "*Chama*" Courtroom, Fourth Floor, Albuquerque, New Mexico.

IT IS SO ORDERED this 11th day of August, 2011, at 9:00 o'clock a.m.


M. CHRISTINA ARMIJO
United States District Judge